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KEVIN STOCK
COUNTY CLERK
NO: 13-2-05025-6

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

KANG, KYOUNG-SEN, an individual, in her capacity as **GUARDIAN AD LITEM** for two minor boys **CHAE, JONG-HYUN** and **AN, SEONG-JUN**[1] Plaintiffs, vs. **MI JOO TOUR & TRAVEL LTD.**, a British Columbia, Canada corporation Defendant.	NO. **COMPLAINT FOR PERSONAL INJURIES AND DAMAGES**

COME NOW the Plaintiffs, by and through their attorneys Charles Herrmann and John Scholbe of the ***HERRMANN SCHOLBE*** law firm, and allege as follows:

I. NATURE OF ACTION

1.1 This complaint is brought by Ms. Kang, Kyoung-Sen as Guardian Ad Litem (hereinafter referred to as "Ms. Kang") on behalf of the two minor plaintiffs – 16-year-old Chae, Jong-Hyun and 15-year-old An, Seong-Jun (hereinafter referred to jointly as "boys") for personal injuries and damages they suffered in a motor vehicle accident that occurred in Umatilla County, Oregon on December 30, 2012, while the boys were occupying a commercial tour bus owned by Defendant Mi Joo Tour & Travel Ltd. (hereinafter referred to as "Mi Joo Tour").

[1] According to Korean custom all Korean women retain their maiden family names. Further, Korean nationals speak and write their family names first and then their given names. By simply inserting a comma after the family name as Americans would alphabetically as in a phone book, the name makes sense in both languages. Unless the Court rules otherwise, plaintiffs will utilize this method consistently.

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II. PARTIES

2.2 Ms. Kang is serving as the Guardian Ad Litem herein at the behest of the boys' natural parents who reside in the Republic of Korea. The boys currently, and at all times material hereto, reside in Ms. Kang's home. She is a permanent resident of the United States and is in all ways competent to serve as Guardian Ad Litem for the benefit of the two minor plaintiff boys.

2.2 Both boys are citizens of the Republic of Korea and are present in the USA attending high school as exchange students on F1 visas.

2.3 Mi Joo Tour is a British Columbia, Canada corporation.

III. JURISDICTION & VENUE

3.1 Ms. Kang resides in Tacoma, Pierce County, state of Washington.

3.2 Both boys reside with Ms. Kang in her home.

3.3 Mi Joo Tour is registered with the U.S. Government Department of Transportation (DOT) under number 1608797 and has been authorized to operate for-hire passenger-carrying commercial motor vehicles interstate in the USA by the Federal Motor Carrier Safety Administration (FMCSA) under # MC596046.

3.4 At all times material hereto, Mi Joo Tour has been present and doing business in the state of Washington.

3.5 Mi Joo Tour lists the state of Washington as its base state in its Unified Carrier Registration (UCR) with the U.S. Government. Further, according to documents on file with the FMCSA, Mi Joo Tour has designated Ms. Denise Alto, of the Process Agent Company, Inc., located at 3601 W. Washington Avenue, Suite 1, Yakima, WA 98903, as its authorized agent to accept service of process.

3.6 The subject contract for carriage was entered into in Pierce County, Washington.

3.7 The boys boarded defendant's bus in Federal Way, Washington where the defendant regularly stops to pick up passenger customers.

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3.8 This Court has jurisdiction over the parties and subject matter in this cause of action and venue is proper in Pierce County.

IV. FACTS

4.1 On or about December 21, 2012, Ms. Kang made reservations over the phone at her residence with Mi Joo Tour to take both boys on a nine-day, eight-night package tour beginning and ending in Federal Way, Washington while touring western USA, including various cities in the states of Washington, Oregon, California, Nevada, Arizona, and Idaho.

4.2 The two boys boarded the defendant's bus in the morning of the following day, December 22, 2012, at the *Paldo World* Korean market in Federal Way, Washington. The itinerary was as follows:

Day #	Date	Start	End
1	12/22/12	Vancouver, B.C.	Medford, OR
2	12/23/12	Medford, OR	Los Banos thru San Francisco, CA
3	12/24/12	Los Banos, CA	Anaheim, CA
4	12/25/12	Anaheim, CA	Anaheim, RT to San Diego, CA
5	12/26/12	Anaheim, CA	Los Angeles, CA
6	12/27/12	Los Angeles, CA	Las Vegas, NV thru Anaheim, CA
7	12/28/12	Las Vegas, NV	RT to Grand Canyon, AZ
8	12/29/12	Las Vegas, NV	Boise, ID
9	12/30/12	Boise, ID	Accident (Exit 227, I-84), OR

4.3 The bus was driven by the Mi Joo Tour's employee driver Hwang, Haeng-Kyu (hereinafter referred to as "driver Hwang"). All of his acts material hereto were performed within the scope of his employment and were done on behalf of his principal - Mi Joo Tour. Driver Hwang did all of the driving throughout the entire trip as well as performed tour guide duties for all of his passengers including these boys.

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His on-duty time averaged approximately 12-14 hours a day, sometimes driving as much as 10-12 hours on several days when he drove roughly 500 - 600 miles.

4.4 On the seventh day of the tour, they spent nearly 14 hours traveling slightly over 600 miles round trip from the Circus Circus Hotel in Las Vegas to Grand Canyon National Park in Arizona, to sight-see for approximately 1½ hours at the canyon.

4.5 On the eighth day of the tour, December 29, 2012, the bus departed the Circus Circus Hotel in Las Vegas, Nevada around 10:00 a.m. and then proceeded to drive more than 12 hours, covering 632 miles to where they stayed at the Red Lion Hotel in Boise, Idaho, arriving at approximately 10:30 p.m.

4.6 On the ninth and last-scheduled day of the tour, December 30, 2012, the tour bus departed the hotel in Boise at about 7:30 a.m., traveling approximately 203 miles in a little over three hours to the scene of the accident on a spot known as *Emigrant Hill* or also *Cabbage Hill* in an area commonly referred to as *Deadman Pass* close to mile marker 227 on Interstate 84 between La Grande and Pendleton, Oregon.

4.7 The tour bus passed three reader board signs warning of dangerous conditions ahead posted on I-84 starting just past Ontario, Oregon as the highway ascends over the Blue Mountains and then down their western slopes.

4.8 The roadway is treacherous, so treacherous that the Oregon Department of Transportation had issued an express warning to drivers to "Respect the Hill" in which it urged drivers to exercise "extreme caution." It further warned that between October and April it is common to confront fog, snow, and black ice upon the roadway. The Oregon DOT notice also advised that "posted speeds are maximums in good weather. Bad weather demands lower speeds."

4.9 At the time of the accident, not only was the tour bus descending down a long and winding road, but the weather was freezing. There were patches of snow and ice upon the roadway and fog in places. Yet driver Hwang did not adequately slow the

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bus to a safe speed given the hazardous conditions present. As a result, in the vicinity of mile marker 227 on I-84, driver Hwang lost control of the tour bus as it began to slide erratically from side to side, eventually colliding with a guardrail and then spinning 360 degrees to bust through the guardrail and then careen down a steep embankment, flipping over end-to-end as it crashed down the near cliff.

4.10 The two plaintiff boys were sitting in the rear of the defendant's bus. Chae was sitting on the left side in the second-to-last row while An sat on the right side of the bus in the last row.

4.11 While the bus was not outfitted with seat belts, neither of these plaintiff boys was ejected. Chae was knocked unconscious and An fainted. When they recovered consciousness, they awoke to a nightmarish scene of dead and wounded passengers, people screaming and crying all around them. Some were pinned in the bus, while others lay crying and yelling for help both inside the bus and strewn in the snow outside. The boys did what they could to assist others, and when help arrived they made their way back up to the highway, where they were taken by ambulance to St. Anthony Hospital in Pendleton, Oregon.

4.12 Both boys were kept in the hospital treatment and observation for the balance of the day and in the evening were released to the care of the Red Cross, who in turn secured a hotel room for them where they stayed the next three days as they continued to receive treatment at the hotel by local doctors. Finally, on January 2, 2013, a volunteer drove them back to Ms. Kang's home in Tacoma, Washington where they are currently continuing to treat with local physicians.

V. CAUSE OF ACTION FOR NEGLIGENCE

5.1 Both boys were paying passengers on board Mi Joo Tour's bus.

5.2 Mi Joo Tour's bus was a for-hire Passenger-Carrying Commercial Motor Vehicle as defined in the Code of Federal Regulations found at 49 C.F.R. et seq. As such, under the laws of the state of Washington, Mi Joo Tour is a common carrier.

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5.3 As a common carrier, Mi Joo Tour owed the boys the duty *"to exercise the highest degree of care consistent with the practical operation of its type of transportation and its business as a common carrier."* Washington Pattern (Jury) Instructions at: WPI 100.01.

5.4 All of the above described acts of Mi Joo Tour's driver Hwang were done within the scope of his employment.

5.5 Mi Joo Tour's driver Hwang was negligent in that during the trip he exceeded the Maximum Driving Time for Passenger-Carrying vehicles as provided for in 49 C.F.R. et seq.

5.6 Driver Hwang was further negligent by ignoring multiple warnings concerning dangerous conditions upon the roadway and failing to reduce to a safe speed the bus while on a descending and winding highway laden with fog, snow and black ice. He lost control of the tour bus causing it to crash through the guardrail, where it flipped end-over-end as it fell hundreds of feet down a near cliff on the side of the roadway.

5.7 Mi Joo Tour was actively negligent in that it knowingly caused or permitted driver Hwang to violate the requirements of the Maximum Driving Time for Passenger-Carrying Vehicles as provided for in 49 C.F.R. et seq.

5.8 Mi Joo Tour is vicariously liable for the acts of negligence of its employee driver Hwang as described above.

5.9 Plaintiffs' investigation is ongoing. Further discovery may very well reveal additional acts of negligence on the part of agents of this defendant or establish that other, so far unnamed persons or entities may also be at fault in this accident. Therefore, plaintiffs reserve the right to amend this complaint accordingly.

VI. DAMAGES

6.1 The above described negligence on the part of the defendant and its employee driver were the cause in fact and proximate cause of injury and damages suffered by the plaintiff boys.

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6.2 Both boys suffered serious general damages including, but not limited to, physical injury, pain and suffering, disfigurement, and emotional trauma, the full nature and extent of which will be proven at the time of trial.

6.3 Both boys also suffered special damages including, but not limited to, costs of medical treatment, prescriptions, other medical supplies, and transportation, the full nature and extent of which will be proven at the time of trial.

6.4 The special damages suffered by plaintiff boys are liquidated in nature and ascertainable by computation. To the extent said amounts remain unpaid by defendant, plaintiffs are entitled to prejudgment interest at the statutory rate on these amounts until paid.

VII. PRAYER FOR RELIEF

7.1 **WHEREFORE**, plaintiffs pray for judgment against the defendant in such sum as will fully and fairly compensate plaintiffs for their injuries, general damages, and special damages, including prejudgment interest, other damages to be proven at trial, and attorney fees, costs and disbursements herein, together with such other relief as the Court deems just and equitable in the premises.

DATED this 6th day of January, 2013.

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